



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 26, 1996

Ms. Joanne Wright  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11th Street  
Austin, Texas 78701-2483

OR96-1024

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100135.

The Texas Department of Transportation received a request for fourteen categories of information. You state that most of the information has been released to the requestor. You claim, however, that the performance evaluations of Mr. David Bryant, category eight of the requested information, is excepted from required public disclosure by section 552.103(a) of the Government Code. You have submitted to this office the requested information that you seek to withhold.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision

No. 551 (1990) at 4. The department must meet both prongs of this test for information to be excepted under 552.103(a).

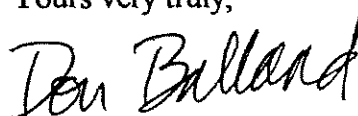
In this instance, you state that the department is currently involved in litigation. You have provided this office with the petition and the department's answers to interrogatories and request for production of documents in that cause, *Julian v. Department of Transp.*, No. H-95-414 (S.D. Tex.). You state that Mr. Bryant is a potential witness in the case and that the litigation may involve issues concerning his personnel file. You have shown that litigation is pending. Although you did not explain how the requested documents relate to the litigation, our review of the pleadings and interrogatories shows that the information at issue is related to the litigation. You may, therefore, withhold the requested information pursuant to section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a).

Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).<sup>1</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 100135

Enclosures: Submitted documents

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<sup>1</sup> We note, however, that some of the information at issue is confidential by law and may not be publicly disclosed even after the litigation has concluded.

cc: Mr. Don Bollwinkel  
2906 Windy Gorge Court  
Kingwood, Texas 77345  
(w/o enclosures)